UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CC-1 LIMITED PARTNERSHIP D/B/A COCA COLA PUERTO RICO BOTTLERS Respondent Employer And CARLOS RIVERA, et als. Charging Parties And UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, INTERNATIONAL BROTHERHOOD OF TEAMSTERS Respondent Union And CARLOS RIVERA et als. Charging Parties And MIGDALIA MAGRIZ, et als. Charging Parties	Cases No. 24-CA-11018, et al. Cases No. 24-CB-2648, et al. Cases No. 24 CB-2706, et al.

MOTION FOR RECONSIDERATION

COMES NOW, **CC1 LIMITED PARTNERSHIP D/B/A COCA-COLA PUERTO RICO BOTTLERS,** hereinafter referred to as "CCPRB", through the undersigned attorneys, and pursuant to Section 102.48 of the Rules and Regulations of the National Labor Relations Board ("Board"), respectfully requests the Board to reconsider its Decision and Order issued on September 18, 2012.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes:

Cases:

I. Brief Background[1]

CC-1 Limited Partnership d/b/a Coca-Cola Puerto Rico Bottlers ("CCPRB"), operates a bottling plant in Cayey, Puerto Rico. Unión de Tronquistas de Puerto Rico, International Brotherhood of Teamsters ("Union"), is the exclusive bargaining representative for most of the warehouse and production employees at the plant. The first collective bargaining agreement ("CBA") between the parties was originally in effect from July 1, 2003 to July 1, 2008, and was later extended in writing until July 31, 2008[2]. CCPRB and the Union then operated under and adhered to the terms and conditions of the expired agreement until they executed the present CBA on February 2, 2009.

On November 16, 2009, Counsel for the General Counsel ("CGC") filed the Third Amended Complaint ("Complaint") in this case based on charges filed on various dates in 2008 and 2009. The Complaint contained four main allegations against CCPRB:

1. That CCPRB violated Section 8(a)(1) and (3) of the National Labor Relations Act ("Act") by discharging Shop Stewards Carlos Rivera, Felix Rivera, Romián Serrano, Miguel Colón and Francisco Marrero (collectively "Shop Stewards"), for their participation in a work stoppage during the evening of September 9;
2. That CCPRB violated Section 8(a)(1) and (3) of the Act by discharging employees who engaged in a strike between October 20 to 22 to protest the suspension and subsequent discharge of the Shop Stewards;
3. That on October 30 CCPRB coerced four of its employees (Luis Bermúdez, José Rivera-Barreto, Virginio Correa and Luis Meléndez) into

[1] The procedural and factual background of the case was discussed extensively in the Brief in Support of Exceptions previously filed by CCPRB.
[2] All dates are in 2008, unless otherwise indicated.

signing a "last chance agreement" conditioning their restatement from suspension on their relinquishment of their right to file unfair labor practice charges or give testimony to the Board, in violation of Sections 8(a)(1), (3) and (4) of the Act; and

4. That on December 18 CCPRB discharged employee Dennes Figueroa because he "assisted the Union and engaged in concerted activities, and to discourage employees from engaging in concerted activities".[3]

The case was tried before Administrative Law Judge Bruce D. Rosenstein ("ALJ") between December 2009 and January 2010. On April 16, 2010, the ALJ issued a Decision and Recommended Order. The ALJ found that CCPRB lawfully suspended and then terminated Shop Stewards Carlos Rivera, Romián Serrano, Francisco Marrero and Félix Rivera, because their actions violated "Articles 12[4] and 13[5] of the expired collective bargaining agreement" and "the Employer's Rules of Conduct". Specifically, the ALJ found that these four Shop Stewards "encouraged other bargaining unit employees to abandon their work stations and join the group of employees heading towards the warehouse area". According to the ALJ's Decision, "under those circumstances, the Employer would have taken the same actions even in the absence of their protected activities".

Notwithstanding the above, the ALJ determined that CCPRB did not sustain the disciplinary actions against Shop Steward Miguel Colón. In doing so, the ALJ

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[3] The allegations concerning the discharge of Dennes Figueroa were settled in 2011. On May 10, 2011, the Board issued and Order granting the request to sever said case along with eleven other cases. See: NLRB's Decision and Order, fn 1.

[4] Article 12, Section 1(d) states in pertinent part:

> "Upon carrying out his duties as such, the delegate (Shop Steward) will not interrupt the work of the rest of the employees. In fact, the delegate will not have the authority to declare strikes or any other action that paralyzes or obstructs the work of the company or workplace."

[5] Article 13 states in pertinent part:

> "[R]epresentatives of Local 901 will notify the Company of their intention to visit the work area and will comply with the rules and procedures established by the Company for visitors. These visits will not interrupt work."

rejected the testimony given by Supervisor Armando Troche as to Colón's involvement in the work stoppage. Furthermore, the ALJ found that the October 20-22 strike was an "unfair labor practice strike" and, hence, CCPRB violated the Act by suspending 4 and terminating 34 employees for their participation in said strike. Finally, as to the allegations concerning the "last chance agreements", the ALJ held that its terms were overly broad and unlawful under the Act.

The parties filed exceptions to the ALJ's Decision and, on September 18, 2012, the National Labor Relations Board ("Board") issued a Decision and Order adopting the ALJ's Recommended Order, in part, and reversing it, in part. The Board reversed the ALJ's findings and conclusions concerning the September 9 work stoppage and held that the discharge of all five Shop Stewards violated the Act. Contrary to the ALJ, the Board found that Article 13 of the CBA was applicable "only to nonemployee union representatives, not to shop stewards," and that Article 12 did not survive the expiration of the CBA. Thus, CCPRB could not rely on these articles to discipline the Shop Stewards. The Board also held that the Shop Stewards were engaged in a protected concerted activity when they encouraged employees to join the work stoppage and, hence, CCPRB could not enforce its Rules of Conduct to discipline them for said activities. Finally, concerning the October 20-22 strike, the Board adopted all of the ALJ's findings and held "that the employees were engaged in a protected unfair labor practice strike".

As part of its Decision, the Board amended the Remedy granted to exclude 12 cases that were settled by means of non-Board settlement agreements. These 12 cases were severed from the other captioned cases and remanded to the Regional Director for Region 24 through a Board Order issued on May 10, 2011. In addition, after the above-mentioned cases were severed, the parties, with assistance from

Region 24, and with the participation of the charging parties' representative, settled all but five of the CA cases. At this moment, only the cases concerning Shop Steward Miguel Colón and striking employees Héctor Sánchez-Torres, Jan Rivera-Mulero, José Suárez and Luis Rivera Morales (R.I.P.) remain unsettled. Therefore, in this motion, CCPRB will only address matters concerning the remaining 5 charging parties.

It is CCPRB's position that the Board erred in finding both that Shop Steward Miguel Colón's termination violated the Act and that the October 20-22 strike was protected under the Act. In reaching these two conclusions, the Board disregarded relevant facts on the record that should have produced different outcomes. For the reasons stated below, CCPRB respectfully requests that the Board reconsider its Decision and Order. Also, CCPRB requests that the Board amend the Remedy granted in its Decision to only reflect the five cases that remain unsettled.

II. Argument

A. Cases Settled during Board Procedures

On April 16, 2010, the ALJ issued his Decision and Order in this case. CCPRB and all other parties filed exceptions to the ALJ's Decision and supporting briefs. Shortly after, CCPRB also commenced settlement conversations by holding Board sponsored meetings at the Region 24 office with the representative of the charging parties, José Budet, and all of the employees involved in this case, including the five Shop Stewards.

Initially, CCPRB reached settlement agreements with 12 charging parties. On January 27, 2011, the Acting General Counsel requested that these 12 cases be severed from the consolidated complaint and remanded to the Regional Office

pursuant to a non-Board settlement agreement.[6] On May 10, 2011, the Acting General Counsel's request was granted through an Order issued by the Board.

Notwithstanding the above, settlement conversations continued between CCPRB and the charging parties, with Region 24's assistance. By the time the Board issued its September 18, 2012 Decision and Order, CCPRB had already settled 27 additional cases, for a total of 39 settled cases of the 44 total included in the consolidated complaint. However, these last 27 settled cases were included in the Board's Decision and Order, as well as in the Remedy granted. Specifically, the charging parties that have settled their cases, but that are still included in the Board's Decision and Order are: Carlos Omar Rivera-Sandoval, Edwin Cotto, José J. Rivera-Ortiz, Vidal Arguinzoni, José G. Díaz, Alexis O. Hernández, Ada L. Flores, Juan Angel Resto, Nilsa J. Navarro, Henry E. Cotto, Héctor A. Rodríguez, Juan Carlos Rivera, José E. Collazo, Gabriel Rojas, Jorge L. Oyola, Pedro A. Colón, José I. Rivera-Martínez, Carlos Rivera-Rodríguez, Rafael Oyola, José Javier Rivera-Barreto, Virginio Correa, Luis D. Meléndez, Carlos A. Rivera-Rivera, Francisco Marrero-Rivera, Romián Serrano, Félix M. Rivera, and Miguel Cotto-Collazo. All of the above-stated 27 charging parties signed non-Board settlement agreements at the Region 24 office.

Given the settlements mentioned above, in this case, <u>the only pending controversies before the Board</u> are those of the following 5 charging parties: Héctor Sánchez, Jan Rivera-Mulero, José Suárez, Luis Rivera (R.I.P.) and Shop Steward Miguel Colón. Since the Board's Decision and Order extends to charging parties who had settled their cases prior to the date of such Order, it is hereby requested that the Board issue an Amended Decision and Order that only reflects the actual parties

[6] The charging parties of the severed cases were: Jariel Rivera, Luis Bermúdez, Benjamín Rodríguez, Héctor Vázquez, Jorge Ramos, Josué Rivera, José Sánchez, Luis Ocasio, Eddie Rivera, Giovanni Jiménez, Carlos Ortiz, and Dennes Figueroa.

remaining in the case. Furthermore, CCPRB requests that the Board eliminate from the Remedy granted any and all matters included in it that do not pertain to the only 5 employees whose controversies are still pending, particularly the order to reinstate the 27 employees that have settled their cases.

B. Miguel Colón and the September 9 Work Stoppage

i. Article 12 survived the expiration of the CBA

Sections 8(a)(5) and 8(d) of the Act require employers to bargain collectively before introducing changes "with respect to wages, hours, and other terms and conditions of employment". 29 U.S.C. 158(a)(5) and (d). The Board and the U.S. Supreme Court have determined that even when a CBA has already expired, an employer commits an unfair labor practice if it makes a unilateral change in a term or condition of employment without first bargaining to impasse over the relevant term. Litton Financial Printing v. NLRB, 501 U.S. 190, 198 (1991); NLRB v. Katz, 369 U.S. 736 (1962); Local Exec. Bd. of Las Vegas v. NLRB, 540 F.3d 1072 (9th Cir. 2008). The logic behind this requirement is that it would be difficult to bargain if, during negotiations, an employer is free to alter the very terms and conditions that are subject to those negotiations. Litton Financial Printing v. NLRB, *supra*. For that reason, pursuant to what has been called the *Katz* doctrine, provisions of the expired CBA that relate to mandatory subjects of bargaining are said to survive the agreement's expiration. Southwestern Steel v. NLRB, 806 F.2d 1111, 1113 (D.C. Cir. 1986). Agreement or impasse is required because the terms and conditions of employment continue in effect by operation of the Act. Local Exec. Bd. of Las Vegas v. NLRB, *supra*. They are no longer agreed upon terms but terms imposed by law, at least in so far as there is no unilateral right to change them. *Id.*

The Board has determined that most mandatory subjects of bargaining fall within the *Katz* prohibition on unilateral changes. Litton Financial Printing v. NLRB, *supra*, at 199. However, the Board has carved out a few exceptions to the unilateral change rule which do not survive expiration of the agreement. Litton Financial Printing Division v. NLRB, *supra*, at 198-200 (1991). For example, the Board has determined that "no strike" clauses do not survive the expiration of the CBA in recognition of the Union's statutory right to strike, except to the extent that other dispute resolution methods survive the expiration of the agreement. *Id.*, at 199.

In this case, Section 1(d) of Article 12 of the parties' predecessor agreement, stated, in the relevant part:

> Upon carrying out his duties as such, the delegate (Shop Steward) will not interrupt the work of the rest of the employees. In fact, the delegate will not have the authority to declare strikes or any other action that paralyzes or obstructs the work of the company or workplace.

Contrary to the ALJ, in its Decision, the Board found that the above cited article did not survive the expiration of the CBA and, hence, it was not a "lawful basis for suspending and discharging the stewards". The Board held that, although Article 12 was not a traditional no strike clause applying to all employees, it contained a waiver of a statutory right that expired with the contract. The Board also stated that any "other conclusion would allow rank-and-file employees to encourage or engage in a protected work stoppage, but would permit an employer to terminate a shop steward for the same reason".

In this case, the language and context of Article 12 of the expired CBA is distinguishable from the common "no strike" clauses that the Board has determined extinguish with contract expiration. In contract interpretation matters, the parties' intent underlying the language of the contract is always paramount and must be

given controlling weight. Lear Siegler, Inc., 293 NLRB 446, 447 (1989); Indianapolis Power & Light, 291 NLRB No. 145, slip op. at 6-7 (Dec. 9, 1988). To determine that intent, the Board must look to both the contract language and relevant extrinsic evidence such as bargaining history. Lear Siegler, Inc., *supra*.

To determine if Article 12 survived the expiration of the CBA, the Board must not read Section 1(d) in isolation, but to the contrary, it must analyze article 12 and the CBA as a whole. Article 12 of the expired CBA only concerns Shop Stewards, as it establishes their duties, responsibilities and benefits (e.g.: super seniority) as union officials that work at CCPRB. Furthermore, the prohibitions set forth in Section 1(d) only apply when Shop Stewards are "carrying [out] their duties as such". As union officials, the Shop Stewards are also bound by the Union's rules and regulation that state that only the Executive Board of the Union may call a strike or work stoppage.[7] In this respect, Section 1(d) of Article 12 benefits not only the Employer, but mainly the Union in preventing overzealous Shop Stewards from calling strikes that do not benefit the bargaining unit.

To determine the parties' intention, the Board must also compare the language of Article 12 with that of other clauses of the expired CBA. Article 5, which is the "no strike clause" contained in the expired CBA, states in pertinent part that "during the duration of the Agreement" there would be no strike or stoppage by the Union, its members, or any of the employees covered by the Agreement. It must be noted that, although the parties limited Article 5 to the "duration of the Agreement", no durational clause was placed on Article 12. This clearly suggests that the parties

[7] The Union's bylaws and constitution provide that "[n]o officer or member of [the] Union or any subordinate body shall call for a strike, stop the work, or initiate a slowdown, or shall urge or intent to urge other members of this Union to do so, without obtaining prior approval of the Executive Board." The "Executive Board and/or Executive Officers of the Union are the Local's President, Vice-President, Recording Secretary, Secretary-Treasurer and Three Trustees (R.U. Exh. 9, Article XXX – Authorization for Strike; Art. VI and Art. VII)

intended the Shop Stewards' prohibition not to interrupt work or call strikes, while acting as Union officials, to survive the expiration of the CBA.

Different from the waiver of statutory rights of employees, that do not survive the expiration of the CBA, the agreed upon prohibitions that the Union places on its officials, when acting as such, should continue in full force and effect after the expiration of the agreement, as the ALJ correctly determined in his Decision. During the September 9 work stoppage, the Shop Stewards did not act as employees, but only as Union officials. When they entered the plant and provoked a work stoppage they had just concluded an off-site bargaining session. None of them was scheduled to work and, in Miguel Colón's case, it was not even his work shift.[8] Under these circumstances, CCPRB's disciplinary actions based upon Article 12 should be deemed lawful under the Act.

ii. Miguel Colón encouraged employees to stop working in violation of Article 12 of the CBA

In his decision, the ALJ found that Miguel Colón did not participate in the September 9 work stoppage and did not encourage any employee to participate in the stoppage. In making this determination, the ALJ rejected the uncontested testimony of Supervisor Troche, and stated:

> ..., I reject the testimony proffered by Supervisor Troche that Shop Steward Colón stated to employees to stop work and **note that Troche did not make that statement in his pretrial affidavit**. I find the Respondent's attempt to link Shop Steward Colón with the conduct of other four Shop Stewards in instructing to stop work is not supported by the record. (ALJ Decision, p. 14)

As cited above, the only reason given by the ALJ to reject the testimony given by Troche was that he did not mention in his pretrial affidavit that Shop Steward Colón told employees to stop working. However, as it was thoroughly discussed in

[8] Miguel Colón belonged to the first shift.

the Brief in Support of Exceptions filed by CCPRB, the ALJ's only basis for discrediting Troche's testimony is factually incorrect. Contrary to the ALJ's finding, Troche did indeed make reference to Miguel Colón's actions in his pre-trial affidavit. Specifically, in paragraph 10 of the affidavit, Troche stated: "I saw Miguel Colon arrive in the ramp area when the employees where (sic) leaving the ramp area and joined the group at that moment". (CGC Exhibit 14, paragraph 10). Furthermore, in paragraph 12 of the affidavit, Troche stated: "I saw Félix, Romián and Miguel (Colón) between the conventional area, 'picking' and the warehouse area towards the second hallway towards the cafeteria, making gestures to the employees that were still inside to go outside and then they rejoined the group where José Adrián was." (CGC Exhibit 14, paragraph 12).

Notwithstanding the above, in its Decision, the Board erroneously adopted the ALJ's credibility findings regarding Troche's testimony. Surprisingly, the Board held that to reach their conclusion it was "unnecessary to rely on the Judge's finding that Armando Troche's affidavit failed to mention Colón", even though it was the only basis given by the ALJ to reject the testimony.

In their decisions, ALJ's must specify the reasons for their credibility findings so that subsequent reviewers may have a fair sense of the weight given to the testimonies. See: Golembiewsky v. Comm. of Social Security, 322 F.2d 912 (7th Cir. 2003). ALJ's must explain why they determined that a testimony is credible or not. See: Briggs v. Comm. of Social Security, 248 F.3d 1235 (10th Cir. 2001). The Board's established policy is not to overrule an ALJ's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950). However, when an ALJ's credibility findings are based on facts that on their face are incorrect, the Board

and appellate courts must carefully examine the record to determine if it is necessary to substitute their view of credibility for that of the ALJ.

In the present case, the ALJ's sole reason for rejecting and discrediting Troche's testimony was that he did not mention that Miguel Colón told employees to stop work in his pretrial affidavit. As mentioned above, there is no doubt that the basis stated by the ALJ is completely inaccurate and incorrect. The pretrial affidavit, which the Board may examine, speaks for itself and clearly demonstrates the ALJ's error. Given this extraordinary circumstance, it is the Board's duty to review all the relevant evidence and draw its own credibility determination. Particularly, the Board must weigh Troche's statements during the hearing against Miguel Colón's testimony.

In this respect, Troche testified convincingly and without hesitation that, although Miguel Colón was the last Shop Steward to arrive at the plant during the night of September 9, as soon as he arrived through the conventional ramp area he started telling employees to stop working, as did the other Shop Stewards. (Tr. 883, ln. 13-25 Armando Troche). It must be noted that Troche's declarations were completely consistent with his pretrial affidavit. In contrast, the Board must not credit Miguel Colón's self-serving testimony given his obvious disposition to misrepresent his involvement in the September 9 work stoppage. Colón had everything to lose if he admitted his involvement in the work stoppage. The Board must also consider CGC had at its disposition dozens of unbiased witnesses to refute Troche's testimony, but chose not to present them. Therefore, Troche's testimony must be presumed correct and uncontested.

iii. Even if Article 12 did not survive the expiration of the CBA, the work stoppage was not protected under the Act

On-the-job work stoppages can be a form of economic pressure protected under Section 7. Cambro Mfg. Co., 312 NLRB 634, 635 (1993), *citing* NLRB v. Washington Aluminum Co., 370 US 9, 15 (1962). However, not every work stoppage is protected activity. Quietflex Mfg. Co., 344 NLRB 1055, 1056 (2005), *citing* Molon Motor & Coil Co., 302 NLRB 138 (1991). The line between a protected work stoppage and an illegal trespass is not clear-cut, and varies from case to case depending on the nature of the competing interests at stake. Cambro, *supra,* citing Hudgens v. NLRB, 424 US 507, 522 (1976); Babcock & Wilcox Co., 351 US 105, 112 (1956). Drawing that line requires the Board to balance "whether the means utilized by the employee in protesting, when balanced against the employer's property rights, are entitled to the protection of the Act. Cambro, *supra,* citing Peck, Inc., 226 NLRB 1174, 1175 (1976).

Recently in Quietflex Mfg. Co., 344 NLRB 1055, 1056-1057 (2005), the Board cited 10 factors that it has considered in determining which party's rights should prevail in the context of an on-site work stoppage:

(1) the reasons the employees have stopped working;

(2) whether the work stoppage was peaceful;

(3) whether the work stoppage interfered with production, or deprived the employer access to its property;

(4) whether employees had adequate opportunity to present grievances to management;

(5) whether employees were given any warning that they must leave the premises or face discharge;

(6) the duration of the work stoppage;

(7) whether employees were represented or had an established grievance procedure;

(8) whether employees remained on the premises beyond their shift;

(9) whether the employees attempted to seize the employer's property;

(10) the reason for which the employees were ultimately discharged.

When analyzed as a whole, the evidence on record demonstrates that the September 9 work stoppage was more harmful to CCPRB than any potential impact it could have on the employees' Section 7 rights. For that reason, the September 9 work stoppage should be deemed unprotected.

The truth is that on September 9 the employees did not cease work to protest CCPRB's refusal to allow López to speak to the employees at CCPRB's cafeteria. This stoppage was not the usual work stoppage in which employees cease work spontaneously to protest issues related to their working conditions. Here, the employees were taken out of their work areas by the Stewards without any explanation for such actions. (Tr. 871, ln. 3-25; Tr. 872, ln. 9-17; Tr. 876, ln. 17-22; Tr. 877, ln. 14-25; Tr. 878, ln. 1-4; Tr. 883, ln. 25 Armando Troche; Tr. 994, ln. 10-11, 21-25; Tr. 995, ln. 1; Tr. 997, ln. 3-10; Tr. 999, ln. 2-7 Marcos Mercado). Neither the warehouse employees, nor the production employees, had any way of knowing why they were ordered to stop working. It was not until all the employees were gathered at the conventional area that López told them that he had an incident with Victor Colón (Tr. 208, ln. 17-23 José Adrián López). In other words, the employees stopped working because the Shop Stewards, including Miguel Colón, ordered them to do so; not because they decided on that course of action to protest a known labor grievance.

A careful examination of the factors enunciated by the Board in Quietflex Mfg. Co., *supra*, tilts the balance in CCPRB's favor. The work stoppage took place inside CCPRB's facilities and halted all production for approximately two hours. None of the

Shop Stewards were scheduled to work at the plant that night. In addition, Shop Stewards Miguel Colón and Francisco Marrero were outside of their work shifts.[9] (Tr. 827-828 Stipulation of the Parties; Tr. 199, ln. 4-15 José Adrián López). CCPRB employees were represented by a union and had an established grievance procedure. No evidence was offered that CCPRB would not respect such grievance procedure in this case, nor was any evidence offered of CCPRB engaging in **any** anti-union activity during the term of the CBA. Instead of employing the drastic measure of a work stoppage, the Union had the alternative of filing a grievance for CCPRB's alleged denial to allow López to speak to the employees. López testified that this was the first time that he was not allowed to enter the plant to speak to the employees. Thus, this was not a recurring situation that was grieved and could not be solved satisfactorily through the grievance procedure. Moreover, during the night of September 9 the Stewards had the opportunity to present their grievance to management, but they opted not to do so.[10] Additionally, even assuming that the CBA expired in July 31, 2008, the date of the last written extension, the employees continued to be represented by the certified Union and the employer continued to have a duty to process grievances and negotiate with the Union. In fact, after the September 9 incident, the Union filed a grievance on behalf of the five suspended

[9] Miguel Colón and Francisco Marrero belonged to the first shift.

[10] On the night of September 9 Armando Troche, the highest ranking supervisor of the warehouse department twice attempted to talk to the Stewards, providing them with an opportunity to seek resolution of the issues. When Troche asked Félix Rivera (whom he had supervised previously) and Romián Serrano what was happening, Rivera merely replied "not to take it personally, that he would not understand" without providing any further explanation and Romián Serrano remained silent (Tr. 875, ln. 13-20 Armando Troche). Later, before the incident with Víctor Colón inside the warehouse, Troche approached López, Charlie Rivera and Francisco Marrero near the intersection between the dispatch and conventional area and asked them to lower their voice and what was happening? Francisco Marrero replied "shut up you asshole, this has nothing to do with you". Carlos Rivera and López did not say anything. (Tr. 882, ln. 1-9 Armando Troche)

Shop Stewards. (Joint Exhibit 12) It could have done the same with Lopez's situation.

Based on the foregoing, the *Quietflex* test requires the conclusion that the work stoppage was not protected and the termination of the five Shop Stewards, including that of Miguel Colón, was not a violation of the Act.

C. The October 20-22 Strike

The National Labor Relations Act ("the Act") was signed into law by President Franklin Delano Roosevelt on July 5, 1935. Although more than seventy years have passed and thousands of decisions interpreting the Act have been issued since then, the purpose of the Act still remains the same: to secure industrial peace through collective bargaining between employers and the exclusive representatives selected by workers. To this effect, Section 1 of the Act states:

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 29 U.S.C. § 151.

To achieve this purpose, Section 7 of the Act guarantees employees: [1] "the right to self-organization, to form, join, or assist labor organizations", [2] "to bargain collectively **through representatives of their own choosing"**, and [3] "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection". 29 U.S.C. § 157. These are, for the most part, collective rights which "are protected not for their own sake, but as an instrument of the national labor policy of minimizing industrial strife" by encouraging collective bargaining through duly elected representatives. See: Emporium Capwell v. Western Addition Community, 420 U.S. 50, 62 (1975).

In addition to Section 7 rights, Section 9 of the Act sets forth the well established principle of exclusive representation:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment... 29 U.S.C. § 159.

The exclusivity principle requires that once a union is certified as the representative of the employees, that union is to act as the exclusive bargaining agent for all workers within the bargaining unit. The importance of this principle was recognized by the Supreme Court in Emporium Capwell Co. v. Western Addition Community, *supra*:

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents. Emporium Capwell Co. v. Western Addition Community Org., 420 U.S. 50, 63 (1975), *quoting* NLRB v Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967) and Steele v. Louisville & N.R. Co., 323 U.S. 192, 202 (1944).

When a union is selected by the employees and recognized by the company as the bargaining agent, it is understood and agreed on all sides that bargaining will be carried on between the union and the company in accordance with section 7 of the Act, that the employees will acquiesce in the actions taken by the union, and that they will not undertake independent action with respect to the matters committed to the exclusive bargaining agent. NLRB v. Draper Corp., 145 F.2d 199, 204 (4th Cir. 1944). Not only does the company agree to bargain with the union, but the employees agree "to bargain only through the union." *Id.*

Courts have expressed that the "purpose of the act was not to guarantee to employees the right to do as they please but to guarantee to them the right of collective bargaining for the purpose of preserving industrial peace". *Id.* at 203. Behavior akin to anarchy will defeat this purpose. There can be no effective bargaining if groups of employees are at liberty to ignore the bargaining agency selected and take particular matters into their own hands and deal independently with the employer. In this sense, the employer has "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other". *Id.* at 203.

There are some instances in which the principle of exclusive representation established by Section 9 may be at odds with the workers' right to engage in concerted activities set forth by Section 7. This clash is most striking when unionized employees engage in concerted activities not sponsored by the union which are contrary to the exclusive representative's position concerning a bargaining issue. Although Section 7 grants workers "basic rights of self-organization and self-determination in an industrial setting, through the means of selecting representation to participate in collective bargaining with the employer", the Act does not tender protection to activity, albeit concerted, which abandons the principles of exclusive representation by circumventing the exclusive bargaining agent. Dreis & Krump Mfg. Co., 544 F.2d 320, 326 (7th Cir. 1976).

To achieve an adequate balance between these competing interests, all Section 7 rights must be read and analyzed together, as well as in conjunction with Section 9 of the Act. In determining whether strikes not sanctioned by the exclusive bargaining representative (wildcat strikes) are protected under the Act, the Board and courts have drawn a distinction between strikes that undermine the union's

position as exclusive bargaining representative and ones that do not. East Chicago Rehabilitation Center, Inc. v. NLRB, 710 F.2d 397, 402 (7th Cir. 1983), *citing* R.C. Can Co., 140 N.L.R.B. 588, 595-596 (1963); Sunbeam Lighting Company, 136 NLRB 1248, 1253-1255 (1962). Whether a strike is protected or unprotected by the Act does not rest on the presence or absence of a majority of the union members during the strike, rather on the purpose of the concerted activity and the means employed by the workers engaged in the strike. See: NLRB v. R.C. Can, 328 F.2d 974, 979 n.7 (5th Cir. 1964). Strikes called for the purpose of asserting a right to bargain collectively in the union's place or which are likely, regardless of their purpose, to impair the union's performance as exclusive bargaining representative, are not protected under the Act. *Id.* That is, to decide which of the conflicting policies should prevail (i.e.: Section 7 or Section 9), the trier must decide if the concerted action taken by the workers is in opposition to the policies and actions taken by the exclusive bargaining representative; or, to the contrary, if it is in support of the union's position. NLRB v. R.C. Can, 328 F.2d 974, 979 (5th Cir. 1964). "If the position taken by the [striking] employees is contrary to that of the bargaining representative, the bargaining process itself may there-by be impaired or destroyed". Western Contracting Corp. v. NLRB, 322 F.2d 893, 896 (10th Cir. 1963). In that instance, "such divisive, dissident action is not protected". NLRB v. R.C. Can, *supra.*

In the case at hand, the Board determined that although the October 20-22 strike was not authorized by the Union, the striking employees were engaged in a concerted activity protected by the Act. The Board rejected the employer's argument that the strike was intended to undermine the Union, among other things, based on the fact that the Union conducted a strike vote on September 15, 2008 and requested strike funds from the International Brotherhood of Teamsters. However,

the Board ignored the ample evidence on record that demonstrates that the striking employees bypassed the Union and unilaterally conducted a strike that was contrary to the Union's bargaining position.

After the September 9 work stoppage, on Monday, September 15, the Union held a meeting with CCPRB employees at the parking lot of a furniture store in Cayey, where they established three points that the Union deemed important in trying to solve the issues with CCPRB. (Tr. 136, ln. 25-25, José Adrián López) These three points were: (a) the return to the negotiation table for the new collective bargaining agreement, (b) the reinstatement of the Shop Stewards, and (c) the agreement of CCPRB not to file charges against the Union for the September 9 incident. (Tr. 136, ln. 19-25, José Adrián López; Tr. 249, ln. 7-15, Miguel Colón) To this effect, José Adrián López, the Union's business agent at CCPRB at that time, testified:

> Q. What, if anything, happened during that meeting?
>
> A. Mr. Francisco Marrero [11] presented a motion, which stated the following, and it was that three things had to take place in order for the situation with Coca-Cola to be solved: the return of the negotiating committee, the no filing of charges against the Union, and their return to the negotiating table; **that if these three conditions did not take place, the striking vote would be approved.**
> (Tr. 136, ln. 19-25 José Adrián López)

Miguel Colón, one of the Shop Stewards, also testified:

> It was German Vazquez, the main—the person who was chiefly in charge of addressing that—directing that assembly and he informed everybody there present, the enrollment, of three very important items that in order for him to negotiate with the company again – **that if the company did not agree <u>to at least one</u> of those items,** we would go on strike, and he called for a striking vote—a vote to strike. (Tr. 248, ln 22-25; Tr. 249. Ln 1-4 Miguel Colón)

[11] One of the Shop Stewards.

Consistent with the testimony of CGC's witnesses, the bargaining unit employees agreed that if the referenced issues were not successfully resolved, a strike vote would be approved. (Tr. 136, ln. 25, Tr. 137, ln. 1, José Adrián López) Thus, a strike vote would only be implemented if the Union was unable to reach an agreement with CCPRB on all of these three specific issues. However, the Union would attempt to solve these issues through negotiation before implementing a strike.

Although it is true that the Union met with CCPRB employee on September 15 to discuss a potential strike, the Board failed to consider all of the events that occurred after said meeting which demonstrate that, on October 20, the Union's position was not to strike over the suspension/discharge of the Shop Stewards. To the contrary, the Union's position was to exhaust other negotiating avenues before striking.

On September 16, the Union, as the exclusive bargaining representative of CCPRB's employees, filed a grievance on behalf of the Stewards. (Joint Exh. 12). This was the first step in the grievance process to solve the disputes related to disciplinary actions. The Union also filed a request for strike funds with Teamsters Headquarters. (Tr. 232, ln. 3-4, José Adrián López; CP-24-CB-2706 Exh. 1) The Union´s internal rules require it to follow several procedures before engaging in any strike activity. Under the Union's constitution, prior to becoming involved in a strike, the Union has to notify the International's Joint Council of the contemplated action and the nature of the difficulty. (R.U. Exh. 8, Art. XII-Section 4) The Board points to this petition as evidence that both the employees' and the Union's position was to strike over the reinstatement of the Shop Stewards. However, the petition for approval of strike funds only identified "all the economic articles" of the collective

bargaining agreement being negotiated as the reason for engaging in a strike against CCPRB. (CP 24-CB-2706 Exh. 1) The petition for strike funds **does not** mention the suspension and/or termination of the Shop Stewards as one of the reasons for engaging in a strike. (CP 24-CB-2706 Exh. 1). If the Union's position was to strike over the suspension of the Shop Stewards, it would have been included in the petition for strike funds.

The Board also failed to consider that about two weeks later, on October 3, the Union held an internal election to fill the positions of President, Vice-President, and three trustee positions. (ALJD p. 15, ln. 44-45) The slate supported by José Adrián López, the Shop Stewards and the vast majority of CCPRB's employees lost that election. (RU Exhibit 6; GC Exhibit 34, paragraph 22) This election result created great tension between the Union and the Shop Stewards and CCPRB employees. To make matters worse, by letter dated October 6, the Union terminated José Adrián López, a close ally of the Shop Stewards, from his position as a Business Representative. (ALJD p. 15, ln. 49-52)

Note that from September 15, date in which the Union met with CCPRB employees to discuss the issues to be negotiated with CCPRB, to October 6, the Union did not call a strike at CCPRB. (Tr. 233, ln. 23-25; Tr. 234, ln. 1-2, José Adrián López). On October 9, just a few days after internal elections were held, the Union summoned the employees to an assembly to be held on October 12. (Tr. 283, ln. 3-16 Miguel Colón) The purpose of that assembly was to appoint a new bargaining committee that would substitute the suspended Stewards in order to resume negotiations of the successor agreement. (Tr. 343, ln. 22-24 Alexis Hernández Santana) On that same date, October 9, the Shop Stewards distributed flyers in front of the CCPRB Cayey Plant calling an assembly of their own to be held on October

13. (Tr. 273, ln. 19-22; Tr. 283, ln. 4-16, Tr. 292, ln. 15-18 Miguel Colón) During the hearing, Miguel Colón admitted that on the very same day that the Shop Stewards distributed the flyers for their assembly, they changed its date from the 13th to the 12th. (Tr. 293, ln. 18-25; Tr. 294, ln. 1-4 Miguel Colón) Obviously, the Shop Steward's assembly was purposely scheduled in direct conflict with the Union's assembly to undermine the Union as the employees' exclusive representative. This action would force unionized employees to attend only one of the two meetings. Union Representative Angel Vázquez approached the Shop Stewards and pleaded with them not to instigate the unit members to boycott the Union's assembly. (Tr. 273, 23-25, Tr. 274, ln. 15-17, Tr. 285, ln. 13-25, Tr. 286, ln.1 Miguel Colón). However, the Shop Stewards responded that the members would have to choose which assembly they wanted to attend. (Tr. 274, ln. 15-17 Miguel Colón) Specifically, CGC's witness Miguel Colón testified:

> Q. And at that moment, Ángel Vázquez talked to you and asked you not to instigate the Union and asked you not to instigate the Union members not to go to their [the Union's] assembly and not to divide the membership; is that correct?
>
> [...]
>
> A. Yes, they did say it, **but we told them that the persons deciding where they wished to go were the enrollment, those enrolled –**
>
> Q. The members?
>
> A. The members.
> (Tr. 273-274 Miguel Colón)

Miguel Colón's testimony patently demonstrates the Shop Steward's intention to defy and bypass the Union on affairs that are reserved only for the Union to decide (i.e.: How to achieve the reinstatement of the Shop Stewards and negotiate the CBA). Consequently, two assemblies were held on October 12: one summoned

by the Union and the other by the so called "Committee".[12] (Tr. 273, ln. 19, 22, Tr. 283, ln. 3-16 Miguel Colón)The Union's assembly was conducted by Germán Vázquez, Secretary-Treasurer of the Union, and Alexis Rodríguez, President of the Union. (Tr. 344, ln. 2-7 Alexis Hernández) As to the matters discussed during the Union's meeting, CGC's witness Alexis Hernández testified:

> A. ..., the purpose of that meeting was to choose a negotiating committee because the committee that existed before [the Shop Stewards] was going to take some time before returning. (Tr. 343, ln. 21-24 Alexis Hernández)

At the same time the Union held its meeting, the Shop Stewards held their own meeting. (Tr. 254, ln. 3-12 Miguel Colón) No Union officer was present during the Shop Stewards' October 12 assembly.(Tr. 253, ln. 17-19 Miguel Colón) During this other assembly, presided by Carlos Rivera, the Shop Stewards distributed a pre-drafted document (GC Exh. 29(b)) to attending employees to be signed by them. The document, which was faxed to the Union on October 14, informed the Union that the attending employees wanted "the solution of the collective bargaining agreement" through the Shop Stewards and requested the implementation of a strike vote. (GC Exh. 29 (b))

At this point there was an obvious conflict between the Union's and the Shop Steward's position regarding how to continue the negotiation of the new CBA and how to achieve the reinstatement of the employees. On one side, the exclusive bargaining representative decided to elect a new bargaining committee, continue negotiating the new CBA, and attempt to negotiate the reinstatement of the Shop Stewards before engaging in a strike. The Union clearly expressed in its October 12 meeting that it "would take some time" before the Shop Stewards were able to return and that, in the meantime, they would elect a new bargaining committee. On the

[12] The so-called "Committee" was composed of the five Shop Stewards.

other side, the Shop Stewards wanted the new CBA to be negotiated through them, rejecting the election of another bargaining committee, and also wanted to strike immediately in order to pressure CCPRB into reinstating them.

After the Shop Stewards faxed the signed pre-drafted document, the Union did not respond nor did the Shop Stewards try to elicit a response from the Union. (Tr. 256, ln. 16-25, Miguel Colón; *See*, also, GC Exh. 34 Paragraph 24, referring to GC Exh. 29; GC Exh. 29(b); Tr. 257, ln. 1-8 Miguel Colón) The Union did not authorize or implement the strike vote either. (G.C. Exh. 29(b); Tr. 257, ln. 5-8, Miguel Colón) According to Union bylaws, all strikes must be approved by the Union's Executive Board.[13] However, none of the Shop Stewards occupied a position in the Executive Board.

The conflict between the Union's and the Shop Steward's position regarding how to continue the negotiation of the CBA and their reinstatement became even more evident after the October 12 assemblies. During meetings held by CCPRB with its employees on October 13, CCPRB informed workers that it was willing to resume negotiations, upon the Union's request. (Tr. 322, ln. 3-7 Héctor Sánchez). However, in complete disregard to the Union's position expressed in the Union's October 12 assembly, the employees directly expressed to CCPRB's management that they wanted the Shop Stewards and not the union appointees to bargain on their behalf with CCPRB. (Tr. 322, ln. 3-7; Tr. 323, ln. 1-4, 22-25; Tr. 324, ln. 1, Héctor Sánchez) To this effect, CGC's witness Héctor Sánchez testified:

> Ms. Marzán: Isn't it true, Mr. Sánchez, that during that meeting [October 13]. Mr. Trigueros informed the employees that the company was ready and willing to resume negotiations with Unión de Tronquistas?

[13] See fn. 7.

Mr. Sánchez: That's right.

[...]

Judge: Okay. I think the answer is clear that Mr. Trigueros, according to Mr. Sánchez, did indicate that the Company was ready and willing to resume negotiations with the Tronquistas...

[...]

Ms. Marzán: Isn't it true that during that meeting, all of the employees requested the Employer – informed the Employer that they wanted the five employees to be the one who bargained with the Employer?

Mr. Sánchez: That's right.
(Tr. 323, ln. 22-25, Tr. 324, ln. 1, Tr. Héctor Sánchez)

Contrary to the Shop Steward's position, on October 15, the Union formally requested in writing that CCPRB resume negotiations (Joint Exh. 16), and CCPRB promptly acquiesced. Specifically, through a letter dated October 16, attorney for CCPRB Miguel Maza stated: "..let us know the time, date and place, and we shall be there to reinitiate the same [negotiations]".(Joint Exh. 17) CCPRB employees were aware that CCPRB and the Union were about to resume negotiations. As usual with all communications between the Union and the employer, CCPRB posted both letters on the plant's bulletin boards. (Tr. 322, ln. 3-7 Héctor Sánchez; Tr. 957, ln. 18-25, Tr. 958, ln. 1-22 Marlyn Cruz; Joint Exhibits 16 and 17) Regarding this matter, Marlyn Cruz testified:

Ms. Marzán: Okay. Could you please show the witness Joint Exhibit Number 13, 14, 15, 16 [letter from the Union requesting negotiations] and 17[response from CCPRB]?

[...]

Ms. Marzán: Ms. Cruz, what, if anything, you did with respect to these documents?

Ms. Cruz: These documents were received at our office in Cayey. I received instructions from my supervisor, direct supervisor at the moment, Lourdes Ayala or Carlos Trigueros, to publish these documents in the bulletin boards in the main hall of the operations.

Ms. Marzán: Was that customary, to publish the documents?

Ms. Cruz: Yes, we always publish[ed] any documents that we receive regarding the employees so they can be --- have all the knowledge they need to know what's happening.
(Tr. 957, ln. 18-19; Tr. 958, ln. 7-17 Marlyn Cruz)

In an evident defiance to the Union's position of resuming negotiations of the CBA with another bargaining committee and exhausting negotiation efforts for the reinstatement of the Shop Stewards, on October 19, the Shop Stewards held a meeting at Steward Miguel Colón's house where 30-40 CCPRB employees decided to call a strike. (Tr. 421, ln. 11-12; Tr. 429 ln. 1-5 Carlos Rivera[14]) The Union was not invited to the meeting and no Union officer attended. (Tr. 430, ln.7-8 Carlos Rivera) During the meeting, the Shop Stewards developed the strike strategy and decided to implement the strike the next day, without consulting or notifying the Union. (Tr. 421, ln. 8-10 Carlos Rivera)

It is noteworthy to mention that between October 12 and October 20, neither the Union nor the Shop Stewards nor any of its members apprised CCPRB of their intentions to strike over their demands to have the Shop Stewards reinstated. (Tr. 259, ln. 14-17 Miguel Colón) Notwithstanding, the strike began on October 20, taking both CCPRB and the Union by surprise. (Tr. 257, ln. 24, Tr. 276, ln. 23-25 Miguel Colón; Tr. 657, ln. 17-21 Carlos Trigueros Quesada) During the strike, Steward Miguel Colón used a loudspeaker to request CCPRB's management to reinstate the five Shop Stewards and to sit down to negotiate with them. (Tr. 280, ln. 7-21 Miguel

[14] This Carlos Rivera is not the same Carlos Rivera who was a Shop Steward.

Colón; Tr. 307, ln. 18-21, Héctor Sánchez; Tr. 420, ln. 1-8 Carlos Rivera) As to this matter, Miguel Colón testified:

> Q. ... With whom were you requesting to negotiate?
>
> [...]
>
> A. With the negotiating committee and Lourdes Ayala and Mr. Maza.
>
> Q. Meaning the five delegates [Shop Stewards], Charlie Rivera, Felix Rivera, Romián Serrano, Francisco Marrero, and yourself?
>
> A. Yes, sir.
> (Tr. 280, ln. 7-21 Miguel Colón)

Miguel Colón's testimony serves as additional evidence that the Shop Stewards engaged in a strike that undermined the Union's position. Not only were the employees striking to reinstate the Shop Stewards, which was contrary to the Union's position to negotiate that matter, they were requesting that the negotiations be done by the Shop Stewards, which was in direct conflict with the Union's stance on beginning negotiations with a new/interim bargaining committee. This also proves that the Shop Stewards were acting as a labor organization or committee with the purpose of dealing directly with CCPRB concerning terms and conditions of employment.

In addition to the reasons already stated, the Board also based its finding that the October 20-22 strike was protected under the Act on the fact that "the Union did not communicate to the employees that a strike would be inconsistent with the position of the Union or that a strike was not authorized at that time". First of all, whether the Union communicated to its members that a strike was inconsistent with its position and that it was not authorized by the Union should not be the determinative factor in this case. Instead, what should be controlling is whether

striking employees knew that they were participating in an unauthorized strike that was contrary to their exclusive bargaining representative's position.

Based on the uncontroverted evidence on record, there is no doubt whatsoever that striking employees knew that the Union did not sponsor or authorize the strike and that it was contrary to the Union's bargaining position: (1) On October 12 two meetings were held: one by the Union to elect a new bargaining committee and another by the Shop Stewards to request that the bargaining be done through the Shop Stewards and to request the implementation of a strike vote. Given that employees had to decide which meeting to attend and given the different position taken at each meeting, employees knew or should have known that there was a conflict between the two parties. (2) On October 13, during a meeting with CCPRB management, employees expressed that they wanted the negotiation of the new CBA to be conducted by the suspended Shop Stewards; which was in direct conflict with the position taken by the Union in the meeting held the day before. (3) On October 19, employees attended a meeting at Shop Steward Miguel Colón's house where they decided to begin a strike the next day and coordinated all the strike strategy. No Union officers participated in such an important meeting. (4) No Union officers attended the October 20-22 strike. (Tr. 349, ln. 16-18 Alexis Hernández Santana[15]) (5) On the first day of the strike, October 20, the Union faxed a letter to CCPRB informing that they disapproved and disavowed the strike. Miguel Colón, as well as other witnesses, testified that one of CCPRB's security officers gave a copy of the letter to each striker. (Joint Exhibit 19[16];Tr. 277, ln. 25, Tr. 278, ln. 1-3, Tr. 278,

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[15] GCG's witness Alexis Hernández testified:

Q. During that period of time, who, if anybody from Unión de Tronquistas did you observe in the area?

A. No, no one, none.

[16] Joint Exhibit 19 is the Union's letter addressed to CCPRB's legal representatives whereby the Union directly and specifically disavowed the strike.

ln. 11-23 Miguel Colón; Tr. 662, ln. 17-21; Tr. 665, ln. 20-25 Carlos Trigueros Quesada; Tr. 959, ln. 13-25 Marlyn Rose Cruz Santiago, hereinafter Marlyn Cruz; Tr. 1016 ln. 10-25; Tr. 1017 ln. 1-5 Micael Resto) Hence, all striking employees knew that their action was repudiated by the Union. In fact, after the letter was distributed, a number of the striking employees abandoned the strike and returned to work. (Tr. 666, ln. 16 Carlos Trigueros Quesada).

The Board should not be so ingenuous as to believe what no one else would believe. The evidence on record clearly demonstrates that the striking employees knew that by engaging in the October 20-22 strike, they were acting without the Union's authorization and against their exclusive agent's bargaining position. When a group of employees acts outside the channels of union affairs to protest, even the discharge of a fellow employee, such action "undermines the goals of democracy in the unions and effective labor adjustment through the bargaining process." NLRB v. Shop Rite Foods, 430 F.2d 786, 791 (1970). Such conduct which obviously violates the principle of exclusive representation is not, and should not, be protected by the Act.

In this case, after an internal Union election in which the slate supported by CCPRB employees lost, the Shop Stewards, also discontent with the way the Union was handling their suspension/discharge and the Union's decision to elect a new bargaining committee, decided to take matters into their own hands. However, under the Act, the Shop Stewards were not allowed to do as they please. The Act vests the exclusive bargaining representative, and only the exclusive bargaining representative, with the power to decide how to handle all issues related to the terms and conditions of employment, including the negotiation of a CBA. The October 20-22 strike was created and developed behind the Union's back, with the clear

intention of usurping the Union's role as the exclusive representative of CCPRB's employees, and impairing the Union's ability to effectively continue negotiations of the new CBA with replacement stewards. The employees' actions, promoted by the Shop Stewards, placed CCPRB in a position where it had to continue meeting the Union's bargaining demands or face unfair labor practice charges, and, at the same time, it also had to attend the demands of the Shop Stewards as spokespersons of the strikers. This exact situation is what the Section 9 principle of exclusive representation seeks to prevent.

III. Conclusion

For the reasons stated above, CCPRB respectfully requests that the Board reconsider its Decision regarding the legality of Miguel Colón's discharge. Article 12 of the parties' predecessor agreement is distinguishable from a common "no strike" clause and must be deemed to survive the expiration of the CBA. Furthermore, CCPRB requests the Board to reconsider its adoption of the ALJ's credibility findings regarding Miguel Colón participation in the September 9 work stoppage, given that they were based on patently incorrect information. Moreover, the September 9 work stoppage was not a protected concerted activity and, thus, the termination of Miguel Colón for his participation in said stoppage was lawful.

CCPRB also requests that the Board reconsider its finding that the October 20-22 strike was an unfair labor practice strike. The evidence on record clearly demonstrates that the employees that participated in said strike did so with knowledge that they were acting without the Union's authorization and against the Union's bargaining position. By holding the October 20-22 strike protected, the Board would greatly sever the well established principle of exclusive representation.

Finally, CCPRB requests that the Board amend its Decision, Order and Remedy to reflect the only five unsettled cases.

Respectfully submitted, this 16th day of October, 2012.

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CERTIFICATE OF SERVICE

We hereby certify that on this same date a true copy of this document was served upon the following:

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Dated at San Juan, Puerto Rico this 16th day of October, 2012.

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